IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 121 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL RAJIBHAI MEGHRAJBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 121 of 1985

MR YATIN SONI for Petitioner No. 1

MR MANISH DAGLI, AGP for Respondents No. 1-2

NOTICE SERVED for Respondent No. 3

MR CK PANDYA for Respondent No. 4

..... for Respondents No. 4/1-4/5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/03/2002

ORAL JUDGEMENT

The petitioner purchased the land admeasuring 15 ft.x 27 ft. in village Vasda in Taluka Palanpur of Banaskantha District at a public auction held on 15.5.1981. The bid offered by the petitioner at Rs.1.80 ps. per sq.mtr. was the highest, i.e. the price offered by the petitioner was Rs.67/-. According to the petitioner, the land was allotted to the petitioner by the Gram Panchayat. However, the order of allotment is not placed on the record of this Court. The Taluka Development Officer, by his impugned order dated 24.3.1981, set aside the auction. The petitioner therefore carried the matter in appeal before the Deputy Collector, who, by his order dated 23.4.1982, set aside the order of the Taluka Development Officer and held that the auction was held in accordance with law and that the dispute about easement right raised by respondent No.4 herein could be agitated before the Civil Court. This order of the Deputy Collector was carried in appeal before the Collector, Banaskantha. The Collector, Banaskantha, heard four appeals as the Gram Panchayat had held auction in respect of four plots. The Collector, Banaskantha, came to the conclusion that the plots in question were not properly demarcated and that the four plots in question can not be said to be small strips of land adjacent to occupied unalienated plotting sides falling within Rule 43B of the Rules, but at the same time, the Gram Panchayat should not have kept five feet of land as surplus land and that looking to the areas of the four plots, they were required to be reorganized and thereafter reauctioned. The Collector accordingly set aside the orders of the Deputy Collector and directed the Gram Panchayat to reorganize the four plots and to dispose them of by public auction. For that purpose, the matter was remanded to the Taluka Development Officer. Against the said order dated 30th March, 1983, the petitioner and another person preferred Revision Application Nos.562/83 and 563/83 before the Secretary (Appeals) in the Revenue Department of the State of Gujarat. The Secretary (Appeals) dismissed the Revision Applications and confirmed the orders of the Collector. The present petition is filed against said common order dated 19.7.83 (Annexure-D) of the Secretary (Appeals) in Revision Application No.562/83.

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#. Mr.Yatin Soni, learned counsel for the petitioner has vehemently submitted that the orders of the Taluka Development Officer, Collector and Secretary (Appeals) were illegal and without jurisdiction because there was no illegality with the public auction held on 15.5.1981. The upset price was fixed at Rs.1.50 per sq.mt. and the

petitioner had offered Rs.1.80 per sq.mt. which was the highest bid and therefore, none of the authorities should have interfered with the said auction. It is further submitted that respondent No.4 had made a misrepresentation about his alleged easementary rights for which, in any case, respondent No.4 had remedy before the Civil Court and the public authorities were not required to interfere with the public auction on account of any alleged easementary rights of respondent No.4.

#. On the other hand, Mr.Manish Dagli for respondents No.1, 2 and 3, i.e. the State of Gujarat and Collector, and Mr.C.K.Pandya, learned counsel for respondent No.4, have opposed the petition and submitted that no interference of this Court is called for in a petition under Article 227 of the Constitution when all that the Collector and the Secretary have done is to ask the Taluka Development Officer to reorganize the four plots and thereafter to dispose them of by public auction. Mr.Pandya also states that the petitioner attempted to put up construction on the land in question in 2001, but in Regular Civil Suit No.23 of 2001, the Civil Court at Palanpur has restrained the petitioner from putting up any construction on the land in question.

#. Although this fact is not referred to in the orders of the Collector or Secretary (Appeals), it appears from perusal of the sketch at Annexure-A that a part of the land in question falls in public street. There were four plots of land which were put to public auction. The Taluka Development Officer and the Collector set aside the public auction in respect of all the four plots. However only two allottees out of four approached the State Government in revision. Both the revision applications were dismissed but only one allottee has approached this Court through the present petition. It therefore appears that out of the four allottees, only one allottee has made grievance against cancellation of public auction. Looking to the sketch at Annexure-A and considering the fact that a part of the land in question falls in public street and that the said land in question along with three other plots of lands are directed to be reorganized as per the impugned orders and are thereafter to be put to public auction, it appears to the Court that no interference of this Court is called for in exercise of its extra ordinary prerogative Writ jurisdiction under Article 226/227 of the Constitution. Since the petition remained pending before this Court for the last seventeen years, it would be just and proper that the Collector directs the Taluka Development Officer, Palanpur, to reorganize the plots and put them to public auction after

ensuring that none of the plots fall in a public street. This shall be done as expeditiously as possible and preferably within a period of two months from the date of receipt of the Writ of this Court or a certified copy of this order, whichever is earlier. With these observations, this Special Civil Application is dismissed. Rule is discharged. No order as to costs.

#. At this stage, the learned counsel for the petitioner prays that the ad-interim relief granted earlier may be continued for some time in order to enable the petitioner to have further recourse in accordance with law. It is therefore directed that the ad-interim relief which was granted earlier shall continue till 28th March, 2002.

(M.S.Shah, J.)

(sunil)